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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(SOUTHERN DIVISION – SANTA ANA)

In Re: Toyota Motor Corp. Unintended
Acceleration Marketing, Sales Practices,
and Products Liability Litigation

This document relates to:

CV11-08120 JAK (PJWx)
Shirlene Van Alfen, et al. v. Toyota
Motor Sales, U.S.A., Inc., et al.

Case No. 8:10ML02151 JVS (FMOx)

DISCOVERY MATTER

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
TOYOTA DEFENDANTS' MOTION TO
COMPEL FURTHER RESPONSES TO
FIRST SET OF SPECIAL
INTERROGATORIES

Date: June 8, 2012

Time: 10:00 a.m.

Location: JAMS (Orange, CA)

Special Masters: Hon. John K. Trotter (ret.)

Hon. Steven Stone (ret.)

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1 The Toyota Defendants hereby submit the following Memorandum of Points and
2 Authorities in support of their Motion to Compel Further Responses from plaintiffs to
3 Toyota's First Set of Special Interrogatories:

4 **I. INTRODUCTION**

5 Toyota served contention interrogatories on November 1, 2011. Plaintiffs
6 responded by copying and pasting pages and pages of *allegations* from their complaint
7 into their verified discovery responses. That is evasive and non-responsive, though
8 demonstrates very well that despite two years of litigation, plaintiffs haven't discovered
9 any facts, witnesses or documents to support their defect contentions beyond what they
10 put in their Complaint in the first place. Plaintiffs' cover is that they could not answer
11 interrogatories about what they think is defective because Toyota had not produced
12 enough documents or enough witnesses yet and because plaintiffs had not yet inspected
13 the subject vehicle. Since then, Toyota has produced dozens of engineers and other
14 corporate representatives for deposition, and produced millions of pages of documents,
15 and the vehicle has been inspected, and yet, despite the now-close proximity to trial,
16 plaintiffs have provided no further responses. Even when Toyota attempted to meet and
17 confer to obtain further responses to these basic contention interrogatories, which go to
18 the essence of this product liability litigation that has been pending for over two years,
19 Plaintiffs offer only the empty promise of intending to supplement their responses at
20 some point, when they get around to it.

21 Expert disclosure is July 18, 2012. Since disclosure is simultaneous, Toyota
22 should at least get to know what the defect contentions are so that it can be adequately
23 prepared to provide fulsome expert reports that address those contentions; otherwise
24 Toyota is left to guess which of the numerous, unsubstantiated, unsupported, vague
25 allegations set forth in the boilerplate complaint—and now pasted nearly verbatim into
26 the responses—plaintiffs intend to bring to trial. Plaintiffs should have provided
27 complete and straightforward responses in the first instance, but now, at this late date,
28 they absolutely must.

1 **II. FACTUAL BACKGROUND**

2 As this case is the first Bellwether trial and has been the subject of extensive
3 briefing on various issues, Toyota assumes the Court does not require an extensive
4 recitation of the facts of the accident. In sum, this case arises from a single-vehicle crash
5 on November 5, 2010 in Wendover, Utah. Paul Van Alfen was driving his 2008 Toyota
6 Camry with his wife, son and his son's fiancé in the car. As Mr. Van Alfen exited I-80,
7 he failed to slow the car and ran into a rock embankment at the end of the off-ramp. Mr.
8 Van Alfen and his son's fiancé, Charlene Lloyd, died from their injuries.

9 **III. HISTORY OF DISCOVERY DISPUTE**

10 **A. THE DISCOVERY AT ISSUE**

11 On August 1, 2011, this court made clear statements of purpose for the contention
12 and informational interrogatories, including that (1) "defendants ought to learn to the
13 extent the plaintiff have a clear view of what the defects are"¹; and (2) with respect to
14 plaintiffs' claims for misrepresentation and fraud, defendants' would be entitled "to know
15 sooner [rather] that later what is driving those allegations."² It was understood by the
16 Court and the parties as of the August 1, 2011 hearing that Toyota would be
17 propounding interrogatories beginning on September 1, 2011.³ Defendants served
18 Plaintiffs with Toyota's First Set of Interrogatories on November 1, 2011. (McCarthy
19 Decl., ¶ 3, Exh. A) Plaintiffs served responses on December 5, 2011. (McCarthy Decl., ¶
20 4, Exh. B)

21 **B. TOYOTA'S MEET AND CONFER EFFORTS HAVE BEEN IN VAIN;
22 PLAINTIFFS INITIALLY IGNORED IT AND HAVE SINCE STRUNG
23 TOYOTA ALONG WITH THE EMPTY PROMISE OF SUPPLEMENTING
24 AT SOME POINT.**

25 On April 12, 2012, Defendants initiated meet and confer efforts requesting further
26 responses to a number of Plaintiffs' responses to Toyota's First Set of Special

27 ¹ August 1, 2011 Hrg. Tr. ("Transcript"), 10:15-16

28 ² Transcript, 18:17-18

³ Transcript, 15:25-16:2; 17:16-19; 18:6-4

1 Interrogatories. (McCarthy Decl., ¶ 5, Exh. C) Specifically, Defendants sought further
2 responses to Interrogatories Nos. 1, 3-7, 9, 11, 14-16, and 18-2 on the grounds that
3 Plaintiffs' responses to these interrogatories were deficient, as outlined below.
4 Defendants' initial meet and confer efforts also requested a conference to discuss
5 discovery issues, as required by Local Rule 37-1.

6 After twelve days, plaintiffs had not responded. Consequently, on April 24, 2012,
7 Defendants followed up and again requested plaintiffs' counsel's participation in a
8 conference of counsel to discuss Plaintiffs' responses to Toyota's First Set of
9 Interrogatories. (McCarthy Decl., ¶ 6, Exh. D) Plaintiffs responded but wanted the
10 conference call set for early May. (McCarthy Decl., ¶7, Exh. E) After a couple
11 additional brief postponements of the call, the parties agreed to talk on May 9, but
12 plaintiffs' counsel was a no-show. (McCarthy Decl., ¶9, Exh. F) While Plaintiffs have
13 repeatedly stated in response to meet and confer efforts that they will supplement their
14 responses, they have not done so, they have not even said by when they will do so, and
15 they have not given any reason to believe that their supplemental responses will address
16 the concerns raised in Toyota's meet and confer. (McCarthy Decl., ¶ 12, Exh. I & ¶ 13)

17 **C. THE DISCOVERY REQUESTS THAT THE COURT SHOULD COMPEL**
18 **PLAINTIFFS TO PROVIDE FURTHER RESPONSE TO**

19 The following outlines and summarizes the discovery addressed by Toyota's April
20 12, 2012 meet and confer (Exh. C).

21 Interrogatory No. 1: This interrogatory asks plaintiffs to identify statements by
22 Toyota they claim show Toyota knew or should have known that its vehicles had a defect
23 that caused UA. Plaintiffs copy and pasted, almost *verbatim*, all the boilerplate
24 language, bold assertions, and unverified allegations from their Complaint into this
25 response. Even though the request specifically asks for statements "by Toyota"
26 plaintiffs' response contains only a few such statements, post-recall, and for the most part
27 recites pages upon pages of statements by others, such as NHTSA. Rather than clearly
28 identify statements that show knowledge of a defect related to unintended acceleration,

1 plaintiffs make a number of conclusory statements that *just say* Toyota knew of the
2 defect without anything to back it up. Toyota listed a number of these statements in its
3 meet and confer:

- 4 • "Toyota knew other manufacturers continued to use a manual fail-safe mechanism.
5 For example, Toyota knew Audi had a system that mechanically closed the throttle
6 when the brakes were applied." (5:26-28.)
- 7 • Toyota knew no later than 2002 fail-safes were insufficient to prevent UA events
8 in its vehicles and that additional fail-safes were necessary." (6:22-23.)
- 9 • "As acknowledged by Toyota, the emphasis is on fast production. While
10 production and production goals have increased the number of trained quality
11 control employees has decreased. Experienced assembly and quality workers have
12 been replaced with over a thousand inexperienced and relatively untrained
13 temporary workers. The result has been a significant increase in quality control
14 problems per vehicle. Defects are ignored in the interest of speed and quantity of
15 production. Defects that in the past would have resulted in stoppage of the line are
16 over looked. Quality control employees have been told by supervisors that when
17 they find a defect, they are not to record it but to look for other cars that do not
18 have the defect, and only then report the original defective car as an isolated
19 incident that does not require to be recalled. Quality control employees are given
20 goals that send upper limit on the number of defects they are to report." (16:1-12.)
- 21 • "Toyota knows, and knew, this was false because Toyota was fully aware that
22 unintended acceleration had occurred on numerous occasions when there were no
23 floor mats in the involved vehicles." (16:22-25.)
- 24 • "Toyota continued to maintain this position for years, even though it knew that
25 Toyota manufactured vehicles can and do experience sudden unintended
26 acceleration in that application of the brakes has failed to restrain vehicle motion."
27 (19:4-6.)
28

- 1 • "This response of 'no evidence' ignores and concealed the spike in UA events
2 that occur within one year of a vehicle switching to ETCS, a trend known to
3 Toyota." (21:7-8.)
- 4 • "Despite the growing number of UA complaints, Toyota had knowledge of fail-
5 safe mechanisms that protect against unintended acceleration, but failed to employ
6 them." (23:8-10.)
- 7 • "At the same time Toyota was pointing the finger at floor mats, it was investing
8 UA events that it knew were not caused by floor mats, including an event where
9 the service manager at Cedar Rapids Toyota confirmed that UA was not caused by
10 the mat." (24:5-8.)
- 11 • "In Toyota's view, neither the consumer complaints nor the field study indicated
12 the existence of any defect in the vehicles, much less a safety-related defects."
13 (27:1-2.)
- 14 • "Toyota knew that it had saved millions of dollars through concealing the known
15 potential for unintended accelerations in its vehicles." (30:25-26.)
- 16 • "TMC continues to conceal information from United States consumers regarding
17 potential causes for sudden unintended acceleration events." (34:18-20.)
- 18 • "Given Toyota's knowledge of the prevalence of unintended acceleration events
19 and the importance of the safety issue, rather than merely installing the software in
20 non-hybrid Camry vehicles, Toyota should have issued separate 'brake override
21 system installation' recall and included additional vehicle models." (36:13-17.)
- 22 • "Toyota felt the defect was so serious that a recall was required without waiting
23 for the defect to manifest itself in each vehicle." (39:2-4.)
- 24 • "Toyota was careful to make certain it would be difficult to discover what it knew
25 about the UA defect, which models were affected and which managers were
26 involved." (39:17-19.)
- 27 • "In reality, Toyota relies heavily upon its component suppliers to perform such
28 testing. Toyota's suppliers typically complete Toyota's parts level testing

1 independently. Toyota performance standards apply only to Tier 1 suppliers.

2 Toyota does not have any clear written rules or regulations about who must
3 conform to Toyota's standards below its Tier 1 suppliers." (41:9-13.)

- 4 • "Toyota has continued to maintain that there are no problems with its ETCS-i in
5 public and in depositions, but has provided little or no support for these
6 statements. For example, when asked why Toyota believed there were no problems
7 with the ETCS-i, its technical analysis manager testified falsely, '[t]his basis for
8 those statements would be when we have been asked to investigate any customer
9 concern involving unintended acceleration, we have never found anything related
10 to the electronic control system that could be the cause of those matters." (42:11-
11 17.) (Please identify any statements of Toyota which would demonstrate that the
12 technical analysis manager's testimony false).
- 13 • "Toyota has used these issues (sticky pedals and floor mats) as a smoke screen to
14 hide the electronic defects in their vehicles." (42:22-23.)
- 15 • "Despite Toyota's public position, evidence continues to mount that the recalls
16 focus on limited mechanical issues are inadequate to prevent UA, and that the
17 vehicles' electronics cannot be ruled out as a likely cause of the incidents." (43:1-
18 3.)
- 19 • "Toyota knows, or should know, that its electronics are not infallible." (44:1.)
- 20 • "Toyota has continued to deny, and to conceal, that there is any flaw or defect in
21 the acceleration control and throttle system itself." (45:22-23.)
- 22 • "Toyota knew from public statements as well of the dangers posed by the lack of a
23 Brake Over Ride System in its vehicles." (51:15-16.)

24 In light of the Court's clear directive related to case-specific discovery, that
25 Toyota learn the extent to which the plaintiffs have a clear view of the defects and that
26 Toyota know sooner rather than later the basis for plaintiffs' claims of misrepresentation
27 and fraud, plaintiffs must identify Toyota's specific statements that they claim support
28 the contentions in their response. In particular, they need to identify all the statements by

1 Toyota that plaintiffs' claim support their conclusions listed above. Plaintiffs may not
2 resort to referring to other pleadings in response to interrogatories, which require a
3 separate and complete answer. Saria v. Massachusetts Mutual Life Insurance, Co.,
4 (S.D.W.Va. 2005) 228 F.R.D. 536. The shortcoming of plaintiffs' responses over all is
5 compounded by the fact that a number of the responses refer to and incorporate this
6 "response."

7 Interrogatory No. 3: This Interrogatory asked plaintiffs to state whether they
8 contend Toyota vehicles susceptible to UA while other non-Toyota vehicles are not,
9 since it is suggested by allegations in their complaint. Rather than provide an answer
10 that is responsive, the response states the obvious, "Plaintiffs contend that Toyota
11 vehicles are susceptible to UA." (Response at 60:13.) This is not responsive to the
12 question as it asks for a comparison between Toyota vehicles and non-Toyota vehicles
13 and their response ignores the question asked.

14 Interrogatory No. 4: This question asks Plaintiffs to describe and explain the
15 design, manufacturing and software/hardware characteristics glitch of Toyota/Lexus
16 vehicles that make them allegedly susceptible to UA. What plaintiffs have done here is
17 identify the alleged "problem" areas of Toyota vehicles that they are investigating. (See
18 Response at 61:19-62:5.) Identifying the aspects of Toyota vehicles that are planned to
19 be investigated is not responsive to this question which asks for a description and an
20 explanation of Toyota vehicle's alleged susceptibility to UA.

21 Interrogatory No. 5: Toyota requested plaintiffs to identify the documents
22 supporting their claim of Toyota vehicles' susceptibility to UA. In response, plaintiffs
23 refer to their response to Interrogatory No. 1. As discussed above, Interrogatory No. 1
24 seeks the identity of all statements by Toyota claimed to show that Toyota knew, or
25 should have known, that its vehicles were defective, resulting in UA. Interrogatory No.
26 5 instead asks for support for Plaintiffs' contention that Toyota/Lexus vehicle are
27 susceptible to UA. Plaintiffs' response to Interrogatory No. 1 is already non-responsive
28 as it merely reiterates the complaint's allegations and extends well over 50 pages,

1 making it as difficult to pin point what information is responsive to Interrogatory No. 5.
2 Ultimately, Plaintiffs fail to identify any documents and should at this point, given the
3 plethora of documents produced by Toyota and the extensive documents they have
4 designated in preparation for depositions, be able to do so.

5 Interrogatory No. 6: This interrogatory referred to plaintiffs' claim in their
6 Complaint that from 2002-2010 the state-of-the art in the automotive industry for
7 electronic throttle control systems included installation of brake override system, and
8 asked plaintiffs to identify all vehicles in that time frame that were equipped with a brake
9 override system. In response, plaintiffs objected on the basis that it is premature because
10 Toyota has not provided plaintiffs with all the information that has been requested from
11 Toyota during discovery regarding this topic. It is not clear why Toyota would be the
12 source of this information concerning other manufacturers' vehicle. Although plaintiffs
13 attached a document that only "identifies the (sic) some of the vehicles made by other
14 manufacturers . . . that utilized a form of a Brake Override System." (Response at 63:18-
15 20.), Toyota is entitled to a complete answer and therefore a response indicating that the
16 vehicles listed in response to this interrogatory is a complete (and accurate) list or
17 whether plaintiffs will supplement the referenced list.

18 Interrogatory No. 7: Plaintiffs were asked to describe what about Toyota vehicles'
19 design and manufacture makes them "vulnerable to UA incidents" and to state whether
20 the same vulnerability exists in each vehicle. Plaintiffs' answer is non-responsive. They
21 merely describe aspects of the Toyota and Lexus vehicle that they are currently
22 *investigating*. This UA litigation has been ongoing for almost two years and at all times
23 plaintiffs alleged that Toyota and Lexus vehicles are vulnerable to UA incidents.
24 Plaintiffs' have taken over 40 depositions of Toyota-affiliated witnesses, which translate
25 into 40 opportunities to obtain discovery regarding the specific design and manufacture
26 of the Toyota and Lexus vehicles and are in a position to supplement this response with a
27 description and explanation of what about the specific design and manufacture of each
28 ///

1 Toyota and Lexus vehicle makes it allegedly "vulnerable to UA incidents," including the
2 specific Toyota and Lexus vehicles in which this vulnerability allegedly exists.

3 Interrogatory No. 9: This interrogatory asks the plaintiffs to identify each
4 electronic failure and short circuit that plaintiffs contend caused and/or contributed to
5 this incident. Plaintiffs' refer to its responses to Interrogatories Nos. 1, 4 and 7.
6 However, there is nothing in the referenced interrogatories that discuss this incident in
7 particular.

8 Interrogatory No. 11: This interrogatory asked plaintiffs to explain and identify
9 documents or other evidence that supports their contention that the Van Alfen vehicle
10 did not respond to attempts to brake and slow the vehicle, as alleged in their Complaint
11 (§ 35). Plaintiffs' response is non-responsive in that all it states is "Refer, for example, to
12 the Utah Highway Patrol report and the statements of persons identified therein.
13 Discovery is continuing." If plaintiffs will verify that the only document or evidence that
14 they have that the 2008 Camry that Paul Van Alfen was driving failed to respond to his
15 attempts to apply the brakes is the police report, then they need to do so in an
16 unequivocal way – and not by "Refer, for example..." Otherwise they need to come
17 forward with such evidence.

18 Interrogatory Nos. 14 & 15: Plaintiffs' responses to these interrogatory relating to
19 the subject vehicle's chain of possession and prior inspections are demonstrably wrong,
20 based on other recent discovery. And, based on the recent discovery, plaintiffs knew
21 their responses were wrong when they provided them.

22 Interrogatory Nos. 18, 19, 20 and 21: These contention interrogatories are specific
23 to the subject vehicle—the 2008 Toyota Camry that was involved in the crash giving rise
24 to this lawsuit. Toyota asked plaintiffs to identify the components that were allegedly
25 manufactured defectively (No. 18), the design defects plaintiffs claim existed in the
26 vehicle (No. 19), and how the manufacturing or design defects caused or contributed to
27 plaintiffs' injuries (Nos. 20-21). Plaintiffs' responses to these interrogatories refer to
28 Interrogatory Nos. 1, 4, 7 and 8 wherein they pasted their Complaint and discussed

1 *anything but* the subject vehicle. Nothing in plaintiffs' responses to Interrogatory Nos.
2 1, 4, 7 and 8 discusses the subject vehicle in particular. Plaintiffs' response that the
3 interrogatory is premature has long-since expired as expert reports are coming due and
4 trial is mere months away. Further, plaintiffs have spent the past several months
5 deposing numerous Toyota engineers and reviewing millions of pages of Toyota's design
6 history. At a more fundamental level, Toyota wants to know what defect issues are
7 going to be the subject of expert discovery and trial: UA? Brakes? Restraints?
8 Crashworthiness? That is why Toyota served this discovery and that is why Toyota
9 requests further responses to the same.

10 IV. ARGUMENT

11 A. **PLAINTIFFS' RESPONSES TO INTERROGATORIES ARE DEFICIENT** 12 **AND SUPPLEMENTAL RESPONSES ARE NECESSARY NOW IN LIGHT** 13 **OF THE UPCOMING EXPERT DISCLOSURES AND TRIAL**

14 Rule 26(b)(1) of the Federal Rules of Civil Procedure (FCRP) permits discovery
15 of all information relevant to each of Plaintiffs' claims and each of Toyota's defenses, as
16 well as information reasonably calculated to lead to the discovery of admissible
17 evidence. FRCP 33(b)(3) requires that each interrogatory, "be answered separately and
18 fully in writing under oath." Further, the responses must be "responsive, complete and
19 candid. Hansel v. Shell Oil Corp., 169 F.R.D. 303, 305 (E.D. Pa. 1996).

20 A motion to compel is permitted when a party's rightful discovery is frustrated by
21 evasive and nonresponsive language is injected into a discovery response in an effort to
22 avoid having to directly respond to a direct question. FRCP 37(a)(3)(B) ("A party
23 seeking discovery may move for an order compelling an answer, designation,
24 production, or inspection. This motion may be made if ... (iii) a party fails to answer an
25 interrogatory submitted under Rule 33 ... "); FRCP 37(a)(4) ("an evasive or incomplete
26 disclosure, answer or response must be treated as a failure to disclose, answer or
27 respond.")

28 ///

1 In the matter of Williams v. Sprint/United Management Co. (D.Kan. 2006) 235
2 F.R.D. 494, the court held that, "Plaintiff may not answer the interrogatory by generally
3 referring Defendant to the pleadings filed in this case, documents produced, opt-in
4 questionnaire, depositions, or declarations." 235 F.R.D. 494 at 501. In Saria v.
5 Massachusetts Mutual Life Insurance, Co. (S.D.W.Va. 2005) 228 F.R.D. 536, the court
6 found that plaintiff "must specifically identify any responsive materials, rather than
7 referring to other pleadings."

8 Toyota's First Set of Interrogatories include interrogatories prepared for the
9 purpose of obtaining a clear view of what the alleged defects consist of as well as
10 evidence supporting Plaintiffs' claims of misrepresentation and fraud. (McCarthy Decl.,
11 ¶ 2) Instead, Plaintiffs' responses to Toyota's First Set of Interrogatories consist of non-
12 responsive responses that state allegations repeated verbatim from the Complaint or refer
13 to responses that are devoid of any case-specific information. Therefore, such responses
14 fail to comply with FRCP 33(b)(3) requirement that each interrogatory, "be answered
15 separately and fully in writing under oath." These responses are not straight forward and
16 are admittedly incomplete based on Plaintiffs' repeated meritless objection that the
17 interrogatory is premature despite an order from the court allowing such discovery.
18 Toyota read the Complaint. It didn't say what is defective about this vehicle, or any
19 other vehicle, and it didn't identify the facts supporting those defect contentions.
20 Consequently, Toyota served this discovery. Plaintiffs copy/paste of the complaint into
21 their responses is wrong.

22 Plaintiffs' continued failure to supplement these responses at this stage is
23 inexcusable considering the extensive deposition discovery obtained by Plaintiffs
24 consisting of over forty depositions, all taken since Plaintiffs served the subject
25 responses to Toyota's First Set of Interrogatories on December 5, 2011. Additionally,
26 Plaintiffs have had in their possession, and utilized at the depositions, voluminous
27 documents produced by Toyota. **They need to answer the discovery with what they**
28 **know or admit they don't have any responsive information.**

1 **B. TOYOTA ATTEMPTED TO COMPLY WITH LR-37 BEFORE**
2 **RESORTING TO THIS MOTION**

3 On April 12, 2012, Defendants sent plaintiffs the requisite meet and confer letter
4 requesting a conference of counsel and outlining Defendants' arguments regarding the
5 deficiencies of Plaintiffs' discovery responses. As discussed above, Toyota's meet and
6 confer requested a response by April 23 but none was received. Plaintiffs ignored the
7 meet and confer until Toyota tried to get their attention a second time on April 24,
8 formally requesting that a conference of counsel. After back and forth over setting up a
9 date for the conference, a conference call was set. Toyota called in, plaintiffs did not.

10 The Toyota Defendants have made good faith efforts to obtain the requested
11 further responses to its First Set of Special Interrogatories before resorting to the instant
12 motion. Plaintiffs have not supplemented. They say they will supplement, but they
13 haven't supplemented or said when they will supplement or said that their supplemental
14 responses will alleviate the concerns raised by Toyota's meet and confer. Plaintiffs have
15 no reasonable excuse for failing to supplement its interrogatory responses respective to
16 this matter, which is proceeding as a bellwether case and is on a strict discovery
17 scheduled as ordered by the court.

18 **V. CONCLUSION**

19 For all of the foregoing reasons, the Toyota Defendants move this Court for an
20 order compelling Plaintiffs to provide further responses to Toyota's First Set of Special
21 Interrogatories within 10 days.

22 Dated: May 25, 2012

BOWMAN AND BROOKE LLP

23 /s/

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26 Toyota Motor Sales, U.S.A., Inc.
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